

ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW  
PANEL ON THE 10<sup>TH</sup> ANNIVERSARY OF THE GUIDING PRINCIPLES OF INTERNAL  
DISPLACEMENT - 10 APRIL 2008  
STATEMENT OF ERIKA FELLER, ASSISTANT HIGH COMMISSIONER –  
PROTECTION, UNHCR

**(1) UNHCR's standing to talk on this topic**

UNHCR was set up in 1951 as the international organization for refugee protection and solutions. Refugees, their rights and their needs, are our defining mandate responsibility and at the centre of our global operations.

However, the competence of UNHCR has been periodically extended to include a broader group of beneficiaries, notably stateless persons, returnees and, increasingly, persons displaced inside their own countries for reasons which are refugee-like in character.

Our refugee mandate derives from our Statute<sup>1</sup> and a legal, part iteration of it in Article 35 of the 1951 Convention relating to the Status of Refugees. Our broader competence also has some legal basis, for example when it comes to stateless persons, but more generally it derives from authoritative underpinnings in statements or requests from UN entities.

As regards IDPs more specifically, while UNHCR has no formally mandated clear obligation, our authority to speak and act on their behalf has behind it requests over the many years that we take on an ever-enlarging role, coupled with some 30 years now of operational involvement with persons forcibly displaced within their own countries. Hence I was very happy to accept the invitation to offer reflections on how the Guiding Principles on Internal Displacement are an ever more significant feature of all that we do in this domain.

**(2) UNHCR comes as a practitioner, not a theoretician**

The protection of IDPs is primarily the responsibility of the concerned national state. UNHCR's activities, as those of other international organisations, are complementary to sovereign responsibilities which must be discharged.

Our activities centre on capacitating states and affected local societies to address or redress displacement-linked problems. We work within comprehensive, multi-sectoral programmes and our activities cover a wide range of interventions. These include, for example, direct assistance to help the vulnerable, particularly women and children exposed to sexual and gender violence. We are called upon to do things as diverse as organising evacuation of civilians in life-threatening situations; negotiating safe passage for relief supplies; intervening with local entities to prevent involuntary return of IDPs to areas of danger; facilitating freedom of movement, including across borders in order that the displaced can seek asylum; and advocating across a range of concerns so as to improve the physical safety and security of individuals, their access to civil and economic rights, and prevention of discrimination of minority groups within the broader displaced population. We also regularly pursue enhanced legal protection and access to justice for IDPs, *inter alia* through assisting the authorities to develop national legislation and appropriate administrative support arrangements. The

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<sup>1</sup> Annex to UN General Assembly Resolution 428(v) of 14 December 1950.

extension of essential services to IDPs (e.g. food and relief items, health care and shelter) is a key priority as well.

UNHCR's experience now spans some 30 years. As early as 1972, the UN Economic and Social Council (ECOSOC) called on the High Commissioner to extend assistance both to refugees returning to southern Sudan and "persons displaced within the country".<sup>2</sup> Many resolutions since that time have effectively mandated UNHCR to provide protection, assistance and find solutions for IDPs in diverse situations from Angola, Mozambique, Chad or Ethiopia, to Colombia, El Salvador or Nicaragua, Iraq, Central Asia and Afghanistan. UNHCR's involvement with IDPs in the Balkans, the Russian Federation or Sri Lanka is well documented. Today, we work in 24 countries with nearly 13 million IDPs. Increasingly, this is within a coordinated UN framework, within which we formally lead the so-called protection, camp management and emergency shelter clusters. The cluster system, relatively new and still evolving in important ways, is a unique inter-agency cooperative framework for building partnerships and coalitions on behalf of internally displaced people.

### **(3) In all of this, where and how do the Guiding Principles contribute?**

There are an estimated 25 million internally displaced people globally. The total of some 9 million refugees of concern to UNHCR is in some ways modest by comparison. IDP access to effective protection has seriously suffered from the absence of an agreed international law and institutional framework.

The internally displaced do not benefit from as clear and as specific a normative framework as do refugees. For IDPs, there is nothing akin to the very specifically framed 1951 Refugee Convention. While the term "refugee" is a legal categorization, denoting a legal status attained by fulfilling internationally agreed criteria, there is no such status under international law for IDPs. As with all persons under the jurisdiction of the state, they are, of course, entitled to the full protection of national laws; additionally, under international human rights law, states have the general obligation to respect and protect the human rights of their citizens. Furthermore in situations of armed conflict, international humanitarian law may directly apply. There are, however, gaps in the prevailing framework, and its failures are particularly acute in situations of armed conflict, when governments may not wish or be in a position to ensure the necessary protection.

Against this background, the Guiding Principles on Internal Displacement have achieved a special place. While they do not constitute an independent legal source, they bring together key elements of human rights and humanitarian law, and analogous refugee law, into what the UN has recognized "as an important international framework for the protection of internally displaced persons"<sup>3</sup> and, "an important tool"<sup>4</sup> for the identification of rights, guarantees and standards.

A long recognised gap when it comes to IDP protection is the absence of any international agency with a "watchdog", or intervention, function sanctioned by international law. Where internally displaced persons are in need of protection, but states are unable or unwilling to protect, the role of the international community in supporting or reinforcing the protection of basic rights can be pivotal. Yet, the relationship between states and organisations like

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<sup>2</sup> ECOSOC Resolution 1705 (LIII), 27 July 1972

<sup>3</sup> UNGA Resolution A/RES/60/1, 24 October 2005

<sup>4</sup> See e.g. Commission on Human Rights Resolution 2005/46, E/CN.4/RES/2005/46, 19 April 2005

UNHCR, or indeed other protection oriented agencies, when it comes to the protection of IDPs is less specific, more qualified in scope, and clearly still developing. This relationship falls much more within an essentially permissive framework. In this respect, the Guiding Principles have a clear role, to underpin the dialogue, the cooperation, and even the confrontation, which must be part of efforts by the international community, including UNHCR, to protect the internally displaced.

UNHCR appreciates the Guiding Principles as being more than a simple compilation and restatement of legal rules. For us, they are a comprehensive framework for identifying protection concerns, and for planning, implementing and monitoring protection activities.

#### **(4) How does UNHCR actually use the Principles?**

UNHCR has developed a policy framework in support of its enhanced activities for IDPs. Presented to UNHCR's Executive Committee in 2007,<sup>5</sup> the Policy Framework rests on eight so-called "rules of engagement", which have been systematically disseminated to all UNHCR staff and partners. One of these rules, relating to protection and human rights issues, stipulates that "all IDP activities and operations undertaken by the Office will incorporate .... the United Nations Guiding Principles on Internal Displacement".

To help our offices work with this directive, UNHCR collaborated over a number of months, with other UN agencies and NGO partners, to produce a Handbook for the Protection of Internally Displaced Persons.<sup>6</sup> The Handbook, amongst other matters, sets out ways that the Guiding Principles can be used. It specifies in particular, that the Principles should help actors on the ground to:

- monitor and assess the extent to which IDPs can enjoy their rights;
- collect data, using a systematic frame of reference, on protection concerns, causes of displacement and groups with particular vulnerabilities;
- develop strategies and determine programming priorities, including in the area of capacity building;
- raise awareness of and advocate for the rights of IDPs; and
- provide training for displaced individuals and all who come in contact with them on their rights and needs, empowering IDPs to act on their own behalf.

As to how we actually operationalise the Principles, a clear and oft-repeated message of UNHCR Protection field staff is that the Guiding Principles are (in the words of one field office) "a particularly instrumental protection and advocacy tool".

To give some examples, field offices have variously cited: resort to Principle 23 to advocate for admission to local schools of IDP children denied entrance because they lacked the requisite documentation; successfully using Principle 25 to underpin efforts to unblock

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<sup>5</sup> Presented to the Informal Consultative Meeting of 30 January 2007.

<sup>6</sup> Provisionally released December 2007. Available on the UNHCR internet website as : <http://www.unhcr.org/protect/PROTECTION/4794c0764.html>

permission for transport of life saving humanitarian assistance; and employing Principle 14 when local officials refused to register or assist IDPs from other regions.

Staff in the DRC have responded: “One should not underestimate the psychological impact on all stakeholders if a particular group is not just seen as victims, but as individuals with rights they can request be met by the authorities”. They have used the Principles to assist IDPs to regain confidence and become advocates of their own rights. It has been the experience in Nepal that the Principles can have a transformative effect upon communities more broadly. Here we have used them in reconciliation workshops to bring together factions at the district level. Education is another means to mend rifts. In Sri Lanka UNHCR has made specific use of the Guiding Principles in schools, to promote better integration of displaced children into their local schools and communities.

At the level of capacity and institution building, our programmes in Colombia are illustrative of the force of the Guiding Principles in societies with a legal infrastructure able to assimilate them. The Colombian Constitutional Court, with UNHCR’s direct support, has held the Guiding Principles to be part of the “super-constitutional” framework of international law binding on the State through the Constitution’s Supremacy Clause. This has served to require all state actors, at the executive, judicial and legislative levels, to employ them as a guide or framework in their interaction with IDPs. The Principles are now an authoritative framework for interpreting the law and how it must be applied in displacement contexts.

**(5) Conclusion - We are not there yet, however.**

As advocates and users of the Guiding Principles, we appreciate the need not to set the bar too low, by being content to measure the impact of the Principles through indicators such as the number of workshops held on them, or of copies of the Principles distributed, or even of the references to the Principles in national legislation. These are interesting and potentially important indicators, but do not really tell us enough about the extent to which the Principles directly affect the behaviour of States, or materially improve the situation of the IDPs on the ground.

The Guiding Principles have been an important first step. The fact that they are steadily gaining currency as a normative reference point for IDP operations is in no small way due to their active promotion, first by their esteemed creator, Francis Deng, and more recently by the Secretary General’s Representative on IDPs, Walter Kalin. UNHCR is committed to contributing to all efforts to make the Principles a truly effective protection tool. To this end, we concluded a Memorandum of Understanding with the Representative in July 2006. That Memorandum commits us, among other things, to promote the application of the Principles, but also to facilitate the work of the Representative in a variety of ways. We look forward to continuing collaboration so as to move the Principles from being a first step, to constituting an irreversible marker for the road ahead.